United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NO. 76-7263

JOHN E. WILLIAMS,

Plaintiff-Appellant

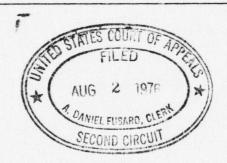
V.

JOSEPH A. WALSH, ETC.

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

APPENDIX



PAGINATION AS IN ORIGINAL COPY

APPENDIX

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CIVIL DOCKET UNITED STATES DISTRICT COURT

CIVIL

Jury demand date: JON D. C. Form No. 106 Rev. ATTORNEYS U. S. Court of Appeals #76-7263 For plaintiff: JOHN E. WILLIAMS 4 ***-25 3 David N. Rosen Rosen & Dolan 265 Church Street VS. New Haven, Ct. 06510 JOSEPH A. WALSH, individually and as Superintendent Bridgeport Police Department; WILLIAM A. O'CONNOR, President; FRANCES E. FAGAN, Vice President; ANDREW C. LINDMARK; FRANK DELAQUILA; WILEY WHEELER: ELMER R. RINKO: TIMOTHY O'NEILL, and ANTHONY CAMARDA, all individually and as the members of the Board of Police Commissioners City of Bridgeport; ROGER LEHMAN, EDWIN MAK; JOSEPH CIUCI; JOHN BOURQUE; and JEROME MITCHELL, members of the For defendant: Raymond B. Rubens Board of Police Commissioners, City Jémes M/ Kezrns / w/d 4/22/76 of Bridgeport Office of the City Attorney 202 State St. Bpb., Ct. NAME OR REC. 1974 COSTS RECEIPT NO. STATISTICAL RECORD pavid N. \$15:00 Clerk 3/27 kosen J.S. 5 mailed 4/5 Deposit .15.0 GF 100869 11 1976 Marshal J.S. 6 mailed Deposit GF10 5/27 Atty_Rosen \$5.00 6/4/76 Basis of Action: Damages & de- Docket fee eratory judgment for violation pltf.'s civil rights (claim Appeal Appeal Bond \$250.00 s suspension and discharge from Witness fees Police Dept. were unconstitutional). Depositions Action arose at: \$200,000

PATE 1974	PROCEEDINGS	Dat Judg
3/27	Complaint, filed.	-
3/27	Motion for Appointment of Robert Ryan, an Indifferent Person as Special Process Server, filed by plaintiff. Ordered accordingly Markowski, C. M-3/27/74	
. 3/27	Summons issued and together with copies of same and of Motion Order and Complaint, handed to Attorney Rosen.	
3/28	Notice to Clerk, filed by Plaintiff.	
4/2	Appearance of David N. Rosen, Esq., entered for plaintiff.	
4/24	Return of Service, filed (all defendants) by Robert W. Ryan, Indifferent Person.	
5/6	Appearance of James M. Kearns, Esq., entered for all defendants.	
5/8/74	Plaintiff's Motion for Default, filed.	
6/28	Plaintiff's Second Motion for Default, filed.	
6/28	Default entered under Rule 55(a), against all defendants. Markowski, C. M-7/2/74. Copies to counsel.	
7/15	Defendants' Motion to Set Aside Default, filed.	
7/22	Stipulation to Set Aside Default, filed by parties.	
7/214	Defendents' Motion to Set Aside Default, endorsed: "Motion granted by agreement." Newman, J. M-7/26/74 Copies to counsel.	
8/5	Action, filed.	-/
8/12	Defendants Motion to Enlarge Time until 8/28/74 any memorandum to support defts' motion to dismiss and any memorandums in opposition to the motion should be filed by 9/6/74, filed by Atty. Samowitz and consented to by Atty. Rosen, counsel for plaintiff. Ordered according Markowski, C. M-8/15/74. Copies to counsel.	dn_
9/9	Defendants' Motion to Dismiss for Failure to State a Cause of Action, endorse Motion off for failure to prosecute." Latimer, M. M-9/9/74. Copies to counsel.	<u></u>
9/13	Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss, filed.	
9/13	Defendants' Motion for Summary Judgment, filed.	
9/13	Defendants' Memorandum in Support of Motion for Summary Judgment filed.	-
9/26	Plaintiff's Motion for Extension of Time Within Which to File Brief and Affidavits in Opposition to Defendants' Motion for Surmary Judgment, filed.	
	Contract of 19-26-71 HALL Congress action To AHL	1

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDING8	Date O
1974		Judgmes
1 21	Plaintiff's Motion for Extension of Time Within Which to File	
	Brief and Affidavits in Opposition to Defendants' Motion for Summary	
	Judgment, until 11/4/74, endorsed: "Motion granted". Latimer, M. M-10/21/74 Copies to counsel.	ļI
	M-10/21/14 dopted to counsel.	
11/4	Motion for Further Extension of Time Within Which to File Answer to Motion	
	for Surmary Judgment, filed by plaintiff.	
11/5	TOTAL CONTRACTOR OF THE WILLIAM CONTRACTOR CO	
	File Answer to Motion for Summary Judgment, to and including 11/12/74	i ,
	endorsed: "Motion granted, by agreement of counsel." Latimer, M. M-11/5/74 Copies to counsel.	-
<u> </u>	M-11/3/14 Copies to counsel.	
11/13	Plaintiff's Motion for Summary Judgment, filed.	4.7.
	Character 1/-15-7 - 17-4 L	
11/13	Brief in Support of Plaintiff's Motion for Summary Judgment and	
	in Opposition to Defendants' Motion for Summary Judgment, filed.	
11/20	1 Add the later to a control Automotion to the control and the	i
		4
	in Opposition to Defendants' Motion for Summary Judgment, filed.	
11/25	Defendants Supplemental Motion for Summary Judgment, filed.	
12/2	Defendants' Motion for Extension of Time to File Memorandum, filed.	
	(To 12/5/74.) Ordered Accordingly (By Agreement of Counsel), Markowski, C.	
	M-12/4/74. Copies to counsel. 7 / 11 /- 5-7x	
		ļ
12/5	Plaintiff's Memorandum of Law for Summary Judgment, filed.	177-3
12/6	Defendants' Memorandum of Law in Reply to Plaintiff's Motion for Summary	1
	Judgment, filed.	
12/9	Per Misc. Cal. of A.H.L. 1. Defendants Motion to Dismiss; 2. Defendants	
	Motion for Summary Judgment; 3. Plaintiff's Motion for Summary Judgment -	
	end rsed: No. 1, 2, 3 - Decision Reserved. Brief in opposition to Def. Supplemental Motion for Summary Judgment, filed by plaintiff. M-12/10/74.	
	Supplemental Motion or Summary Judgment, filed by plaintiff. M-12/10/74. Court from 2:00 to 3:10 p.m. Stewart, Court Secretary.	
	Cours from 2;00 to 3;10 pems beenars, cours been cours.	
12/17	Defendant's Supplemental Memorandum of Law, filed.	-
	Described by Supplemental Human Constant On Dany Laboratory //	
12/17	Affidavit of Superintendent Joseph A. Walsh, filed.	
12/27	Sound Recording of hearing on Defendants' Motion to Dismiss; 2. Defendants'	1
	Motion for Summary Judgment; and 3. Plaintiff's Motion for Summary Judgment held	1
	pn 12/9/74 before Latimer, M., at New Haven, filed in Bridgeport.	-
1975		
4/14		1.71.00
		2.
		C211
976		
2/3	Appearance of Raymond B. Rubens, Esq., entered for all defts.	10
2/3	Motion to Withdraw Appearance for defendants, filed by James M. Kearns, Esq.	1, -1 3.
14/55	Motion of James M. Kearns, Esq., to Withdraw, endorsed: Motion granted. Latimer, M. M-4/23/76. Copies to counsel.	:
	Latimer, M. M-4/23/70. Copies to counsel.	1
		.

APP.3

1976	PROCEEDINGS	Date Judge
4/26	RULING ON PENDING MOTIONS, filed and entered. Plaintiff brought this civil	
	rights action four years after the incident. The State Statute of Limitations is	
	three years, therefore, this action is barred and pltf's motion for summary	
	judgment is denied and defendants' motion for surmary judgment is granted.	1
	Latimer, M., So Ordered, Newman, J. M-4/28/76. Copies to counsel, TEC, MJB, RCZ,	
-	JON, JEL, AHL, FOE, U. Conn. Law Rev.	-
4/28	Judgment, filed and entered. Ordered that pltf's motion for summary judgment	
4/20	is denied and defts' motion for summary judgment is granted and that action is	
-	dismissed. Markowski, C. M-4/28/76. Copies to attorneys of record.	
		
5/27	Plaintiff's Notice of Appeal from final judgment, filed. Copies	
	to Atty. Rosen and Atty. Rubens.	
5/28	Civil Appeals Management Plan and Forms C and D forwarded Atty.	-
-	Rosen.	-
5/28	Certified copies of Notice of Appeal and Docket Entries sent	1
	Clerk, U. S. Court of Appeals.	
	dieta, u. s. court of Appears.	
6/4	Acknowledgment of receipt of Notice of Appeal and Docket Entries	
	received from Clerk, U. S. C. A.	
6/14	Civil Appeal Scheduling Order #1, from U. S. Court of Appeals,	-
	filed. (Record on Appeal due at Court of Appeals on or before	
9	6/30/76.)	1
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U. S. DISTRICT COURT

NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT

JOHN E. WILLIAMS, Plaintiff

VS.

JOSEPH A. WALSH, individually and as Superintendent Bridgeport Police Department, WILLIAM A. O'CONNOR, President, FRANCES E.FAGAN, Vice President, ANDREW C. LINDMARK, FRANK DELAQUILA, WILEY WHEELER, ELMER R. RINKO TIMOTHY O'NEILL, and ANTHONY CAMARDA, all individually and as the members of the Board of Police Commissioners City of Bridgeport, ROGER LEHMAN, EDWIN MAK, JOSEPH CIUCI, JOHN BOURQUE, and JEROME MITCHELL, members of the Board of Police Commissioners, City of Bridgeport,

Defendants

CIVIL ACTION NO.

B-74-91

COMPLAINT

- 1. Plaintiff in this Civil Rights Action seeks damages and declaratory and injunctive relief for his unconstitutional discharge from his position as a patrolman in the City of Bridgeport Police Department.
- 2. This action is brought pursuant to Title 42
 United States Code, Sections 1983 and 1985. Jurisdiction
 is conferred on this Court by Title 28 United States Code,
 Sections 1343 and 1331. The amount in controversy, exclusive
 of interests and costs exceeds \$10,000.

ROSEN & DOLAN ATTORNEYS AT LAW SES CHURCH STREET NEW HAVEN, CONN. 06510 (203) 767-3513

- 3. a. Plaintiff John E. Williams is a citizen of the United States and of the State of Connecticut.Until the suspension and discharge complained of he was a patrolman in the Bridgeport Police Department.
- b. Joseph A. Walsh is and was at all relevant times herein the Superintendent of Police of the City of Bridgeport. As such he is the Chief Executive Office of the Bridgeport Police Department. He is sued individually and in his official capacity.
- c. Defendants O'Connor(as President), Fagan

 (as Vice President), Lindmark, Delaquila, Wheeler, Rinko,

 O'Neill and Camarda were at the time of the Plaintiff's

 suspension and discharge the members of the Bridgeport

 Board of Police Commissioners. They are sued individually
 and in their official capacities.
- d. Defendants Lehman, Mak, Ciuci, Bourque, and Mitchell are now, but were not at the time of the hearing complained of members of the Bridgeport Board of Police Commissioners. They are sued in their official capacities.
- 4. At the time of the acts herein complained of,
 Plaintiff was a permanent employee of the Bridgeport Police
 Department with tenure and a legitimate expectation of
 permanent employment:
- a. The collective bargaining agreement then in force between the City of Bridgeport and the Bridgeport

 Connecticut Police Department employees, Local 1159 -AFL-CIO

provided in pertinent part:

No permanent employee shall be removed, dismissed, discharged, suspended, fined or reduced in rank except for just cause.

b. Section 238 of the Charter of The City of Bridgeport provided in pertinent part:

No member of the Police or Fire Departments of said City... shall be dismissed from his office or position unless the officials...or board having the power of dismissal shall find such member or person to be incompetent or unfaithful to the duties of his office or position. Before any such power of dismissal shall be exercised, the official...or board having the power of dismissal shall call such member or person to be summoned to appear and show cause why he should not be dismissed from his office, which summons with a copy of the charges preferred, shall be left with or at the usual place of abode of such member or person at least six days before the date of the hearing.

- 5. On November 26, 1969, Defendant Walsh filed a complaint with the Board of Police Commissioners (hereinafter the Board) charging Plaintiff with a violation of certain Department rules.
- 6. These charges were based on an incident September 19, 1969, when Plaintiff apprehended a speeding motorist. The motorist complained that Plaintiff had attempted to shoot him and Plaintiff in his Police Report and thereafter denied discharging his weapon.
- 7. A hearing was held on these charges before the Board on December 11, 1969. Plaintiff appeared as ordered at the hearing, with counsel.
- 8. At the hearing witnesses were called by the Board.
 Plaintiff's counsel informed the Board that Plaintiff would not

ROSEN & DOLAN ATTORNEYS AT LAW 268 CHURCH STREET NEW HAVEN, CONN. 06510 (205) 787-2515 testify in his own behalf and would claim the privilege against self-incrimination, if necessary, to resist testifying.

- 9. Plaintiff and his attorney were told by the Board that Plaintiff had to be sworn to assert his Fifth Amendment privilege.
- 10. Plaintiff then was sworn and the following exchange occurred.
 - Com. O'Connor--Did you take your gun out at any time?
 - Williams--Mr. President, on the advice of my Attorney, I cannot answer this question as it intends to incriminate me.
 - Com. Wheeler--I am a little bit amused by your Court Room drama. (Directed to Attorney Keefe). Let's go forward with this case. I respect your client's rights, but you are dramatizing this whole matter simply because you didn't get witnesses names. I would like to ask two questions--whether or not Mr. Williams is being treated fairly or not and whether he filed a written report.

Did you file a written report concerning your activities at the scene of this incident?

- Williams--Com. Wheeler, I can not answer as it intends to incriminate me.
- Com. Wheeler--Mr. Williams, are you aware of the Rules and Regulations concerning the use of guns?
- Williams--Again, I can not answer, as the answer tends to incriminate me.
- Com. Wheeler--Ptlm. Williams, do you know a Patrolman by name of Ptlm. Roger Cole?
- Williams--Sir, on the advice of my Counsel, that may intend to incriminate me at this time.
- Com. Wheeler--Do you feel that knowing him might tend to incriminate you?

ROSEN & DOLAN ATTORNEYS AT LAW SES CHURCH STREET NEW HAVEN, CONN. 00510 (203) 707-3512

- Williams--I can not answer as it may intend to incriminate me.
- Williams -- Again, I must go back to the Fifth.
- Com. Rinko--Were you a Patrolman in the Police Department prior to your suspension?
- Williams--Again, I have to go back to the Fifth Amendment.
- Com. Rinko--Are you John Williams?
- Atty. Keefe--This is reaching a point of becoming ludicrous. You know he is going to take advantage of the Fifth.
- 11. Plaintiff was never directed or compelled to answer the questions posed. He was not informed at the December 11th hearing that his refusal to answer questions based on the claim of Constitutional privilege would, or might be construed to be a violation of the rules of the Bridgeport Police Department, or in any way to constitute a dereliction of duty.
- 12. Plaintiff was not, prior to his claim of Constitutional privilege, offered immunity, or given any assurance that his answers or evidence derived therefrom would not be used against him in any criminal proceeding.

ROSEN & DOLAN ATTORNEYS AT LAW 268 CHURCH STREET NEW HAVEN, CONN. 06810 (208) 767-3513

- 13. The possibility that Plaintiff would be prosecuted criminally for the conduct about which he was questioned reasonably appeared real both to him and to his counsel.
- 14. Plaintiff was found guilty of the charges heard at the December 11th hearing and sentenced to 40 days suspension without pay.
- 15. On December 30,1969, the last day of the suspension, the Board met with Defendant Walsh, and without giving notice to Plaintiff or his attorney or giving them an opportunity to be heard, summarily voted to suspend Plaintiff indefinitely, without pay, for his refusal to answer questions at the December 11th hearing.
- 16. On December 30, 1969, the Board also ordered Defendant
 Walsh to charge Plaintiff with a violation of Rule 98 of the Rules
 and Regulations of the Bridgeport Police Department for his refusal to answer questions at the December 11th meeting.Rule 98
 provides:

Failure of a member, either willfully or through negligence, incompetence, or cowardice, to perform the duties of his rank or assignment, or violation by a member of any department rule, duty, instruction, or order, or conduct prejudicial to the good order and police discipline of the Department, or conduct unbecoming an officer and a gentleman, which may not be specifically set forth in Department rules, may be considered sufficient cause for discharge, demotion, suspension, or other penalty.

ROSEN & DOLAN ATTORNEYS AT LAW 265 CHURCH STREET NEW MAVEN, CONN. 06510

- 17. On January 13, 1970, the Bos ' held a hearing on the alleged violation of Rule 98 at which Plaintiff appeared with counsel and Defendant Walsh acted as prosecutor.
- 18. At this meeting, Plaintiff was not afforded an opportunity to answer the questions posed at the December 11th meeting. At its conclusion the Defendant Board, by unanimous vote, ordered Plaintiff discharged from the Bridgeport Police Department for violating that portion of Rule 98 prohibiting "conduct prejudicial to the good order and police discipline of the Department."

COUNT ONE

- 19. Paragraphs 1 through 18 are herby incorporated by reference in this Count One the same as if fully set forth herein.
- 20. Since Defendants did not inform him that he might be disciplined as a consequence of his refusal to answer the Board's questions, and did not in any way offer Plaintiff immunity from use of his answers or the fruits thereof against him in a criminal proceeding, Plaintiff was inadequately protected from such use and was entitled to rely on the Fifth Amendment and to refuse to answer the questions posed.
- 21. The Board by suspending and discharging Plaintiff for this legitimate exercise of his Fifth Amendment rights unlawfully penalized the exercise of these rights and deprived Plaintiff of his right not to be compelled to be a witness against himself in a criminal proceeding in violation of the Fifth Amendment to the

ROSEN & DOLAN ATTORNEYS AT LAW 265 CHURCH STREET NEW HAVEN, CONN. 06510 (203) 787-2815 United States Constitution and not to be deprived of liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

COUNT TWO

- 22. Paragraphs 1 through 18 are hereby incorporated by reference in this Count Two the same as if fully set forth herein.
- 23. Rule 98 of the Bridgeport Police Department and specifically its prohibition of conduct "prejudicial to the good order and discipline of the Department" is vague and uncertain in meaning. It does not set forth an ascertainable standard of conduct. It gives no notice of the conduct it prohibits.
- 24. Rule 98 and specifically its prohibition of conduct "prejudicial to the good order and discipline of the Department," permits officials to brand conduct of which they disapprove as a violation of Department rules at their whim and vests them with unchecked discretion to define conduct as illegal; it sweeps overbroadly into the area of protected speech and punishes free speech activity which is constitutionally beyond the power of the Bridgeport Board of Police Commissioners to regulate; all in violation of the First and Fourteenth Amendments to the United States Constitution, and it is therefore void.

ROSEN & DOLAN ATTORNEYS AT LAW 268 CHURCH STREET NEW MAVEN, CONN. 06510 (203) 767-3513 25. Application of this Rule to suspend and discharge
Plaintiff therfore denied Plaintiff his rights to freedom of
speech and of the press, his right not to be a witness against
himself protected by the Fifth and Fourteenth Amendments, and his
right not to be deprived of liberty or property by the Fourteenth
Amendment to the United States Constitution.

COUNT THREE

- 26 Paragraphs 1 through 18 are hereby incorporated by reference in this Count Three the same as if fully set forth herein.
- 27. Plaintiff was not informed prior to or at the time of his refusal to answer questions that such refusal might be construed as a violation of Department rules or was in any way improper.
- 28. Rule 98 of the Bridgeport Police Department gave
 Plaintiff no notice that his refusal to answer questions based on
 a claim of Constitutional privilege was a violation of Department
 Rules.
- 29. As applied to Plaintiff's conduct the provisions of Rule 98 prohibiting conduct "prejudicial to the good order and discipline of the Department" are vague and uncertain, and do not provide an ascertainable standard of conduct.
- 30. As applied to Plaintiff, Rule 98 permitted Defendants to brand his conduct as a violation of Department Rules at their whim.

ROSEN & DOLAN ATTORNEYS AT LAW 265 CHURCH STREET NEW HAVEN, CONN. 06510 (806) 767-3813 31. The Board suspended and discharged Plaintiff without giving him adequate advance notice that his conduct violated Department Rules, in violation of Plaintiff's right not to be deprived of his liberty or property without due process of law protected by the Fourteenth Amendment to the United States Constitution.

COUNT FOUR

- 32. Paragraphs 1 through 18 are hereby incorporated by reference in this Count Four the same as if fully set forth herein.
- 33. Plaintiff's refusal to answer questions on the basis of his Fifth Amendment privilege, where he had not been given any assurance that his answers would not be used against him, in criminal proceeding, was not conduct prejudicial to the good order of the Bridgeport Police Department.
- 34. The Board suspended and discharged Plaintiff when there was no evidence that Plaintiff had violated Rule 98 of the Bridgeport Police Department.
- 35. This suspension and discharge when there was no evidence of violation of the applicable rule deprived Plaintiff of due process of law protected by the Fourteenth Amendment to the United States Constitution.

COUNT FIVE

36. Paragraphs 1 through 18 are hereby incorporated by

ROSEN & DOLAN ATTORNEYS AT LAW 268 CHURCH STREET NEW MAYEN, CONN. 08510 (203) 787-3813 reference in this Count Five the same as if fully set forth herein.

- 37. The Board's summary suspension of Plaintiff without pay deprived Plaintiff of his liberty and property without notice and opportunity to be heard in violation of the Fourteenth

 Amendment to the United States Constitution.
- 38. All the actions of Defendants O'Connor, Fagan, Lindmark, Delaquila, Wheeler, Rinko, O'Neill and Camarda were willful and malicious and done with the intent to deprive Plaintiff of each of those right. I Plaintiff which, as this Complaint has set forth, were violated.
- 39. Defendants O'Connor, Fagan, Lindmark, Delaquila, Wheeler, Rinko, O'Neill and Camarda performed all the conduct set forth herein in concert and by agreement with each other and with Defendant Walsh and said Defendants, including Defendant Walsh, conspired and agreed to deprive Plaintiff of his rights as set forth above.
- 40. As a result of the conduct of Defendants, Plaintiff suffered loss of employment and income, great pain and suffering of mind, and great embarrassment and humiliation.
 - 41. Plaintiff has no adequate remedy at law.

WHEREFORE PLAINTIFF CLAIMS:

- One hundred thousand (\$100,000.00) dollars damages.
- 2. One hundred thousand (\$100,000.00) dollars exemplary damages.

ROSEN & DOLAN ATTORNEYS AT LAW 268 CHURCH STREET NEW HAVEN, CONN. 06510

- 3. A declaratory judgment declaring:
- a) That Plaintiff's suspension and discharge from the Bridgeport Police Department were unconstitutional;
- b) That the "prejudicial to the good order and discipline of the Department" providion of Rule 98 of the Rules and Regulations of the Bridgeport Police Department is unconstitutional on its face and void;
 - 4. A permanent injunction
- a) Ordering Defendants to reinstate Plaintiff to the position of Patrolman of the Bridgeport Police Department with full back pay and allowances and restored seniority;
- b) Enjoining Defendants from enforcing the "prejudicial to the good order and discipline" provision of Rule 98 of the Bridgeport Police Department;
 - Costs including reasonable attorneys' fees;
- 6. Such other and further relief as to the Court may appear just.

David N. Rosen
Edward J. Dolan
265 Church Street
New Haven, Conn. 06510
Telephone: 203-787-3513

Attorneys for Plaintiff

ROSEN & DOLAN ATTORNEYS AT LAW 265 CHURCH STREET NEW MAVEN, CONN. 08510 (200) 787-2912

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN E. WILLIAMS

CIVIL ACTION NO. B-74-95

VS.

JOSEPH A. WALSH, ET AL

SEPTEMBER 12, 1974

MOTION FOR SUMMARY JUDGMENT

The defendants move that judgment be entered against the plaintiff for the following reasons:

- It has been settled, as a matter of law that
 a policeman may be discharged for failure
 to answer questions directly related to the
 performance of his job.
- The plaintiff is barred by the principle of collateral estoppel and res judicata.

The following documentation in support of this motion is attached herewith:

- 1. (a) Statement of charges to the Poard of Police Commissioners dated November 26, 1969.
 - (b) Summons commanding John Williams to appear before the Board of Police Commissioners on December 11, 1969 to show cause why he should not be dismissed and to answer charges against him.
 - (c) Partial transcript of the hearing before the Eoard of Police Commissioners on December 11, 1969.
 - (d) Notice to Ptlm. Williams of his dismissal from Superintendent Walsh dated December 30, 1969.

- (e) Statement of charges against Ptlm. Williams dated January 5, 1970.
- (f) Summons to Ptlm. Williams dated January 5, 1970 before the Board of Police Commissioners on January 13, 1970.
- (g) Appeal to the Board of Police Commissioners of John Williams dated January 16, 1970.
- (h) Appeal of John Williams to Civil Service Commission dated January 29, 1970.
- Appeal to the Connecticut State Board of Mediation & Arbitration of John Williams dated February 18, 1970.
- (j) Submission to the Board of Mediation and Arbitration, Labor Department by Superintendent Walsh dated May 14, 1970. (6 pages)
- (k) Brief of the Appellant, John Williams to the State Board of Mediation and Arbitration dated May 28, 1970.
- (1) Arbitration Award, State Board of Mediation and Arbitration, Case No. 6970-A124, dated January 29, 1971.
- 2. (a) Appeal of John Williams v. Board of Police Commissioners to the Court of Common Pleas dated January 16, 1970.
 - (b) Memorandum of Decision dated December 6, 1973, John Williams v. Board of Police Commissioners, rendered by Judge O'Brien, Court of Common Pleas.
- 3. (a) Appeal of John Williams v. City of Bridgeport to the Superior Court dated February 25, 1971.
 - (b) Memorandum of Decision dated June 28, 1971, John Williams v. City of Bridgeport, rendered by Judge O'Sullivan, Superior Court.

THE DEFENDANTS

By

James M. Kearns
Their Attorney
Office of the City Attorney
202 State Street
Bridgeport, Connecticut

CERTIFICATION:

This is to certify that a copy of the foregoing Motion for Summary Judgment was mailed to all counsel of record on the date hereinabove indicated.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN E. WILLIAMS

CIVIL ACTION NO. B-74-95

VS.

JOSEPH A. WALSH, ET AL

NOVEMBER 22, 1974

SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT

The defendants hereby supplement their motion for summary judgment dated September 12, 1974 by adding thereto the following

The plaintiff's action is barred by the Statute
 of Limitations and laches.

THE DEFENDANTS

Py

James M. Kearns
Their Attorney
Office of the City Attorney
202 State Street
Bridgeport, Connecticut

CERTIFICATION:

This is to certify that a copy of the foregoing Supplemental Motion for Summary Judgment was mailed to all counsel of record on the date hereinabove indicated.

James W. Kearns

State of Connecticut

City of Bridgeport

Office of the Board of Police Commissioners

Chilly in the orderof the Police Department By the Authority of the State of Connecticut, you are hereby commanded to appear before the BOARD OF POLICE COMMISSIONERS OF THE CITY OF BRIDGEPORT, at their office on the 11th day December A. D., 19 69, at 8.0'clock PM. and show cause, if any you have, why you should not be dismissed from your office or position, or both, in said Police Department of said CITY OF BRIDGEPORT, and to answer unto the charges filed against you before said Board of Police Commissioners, a copy of which said charges are herewith attached to this summons. To any proper officer to serve and return. Dated at Bridgeport, this 26th day of November Attest Board of Jelice Commissioners

By Cipit. Edward Lombard.

STATE OF CONNECTICUT
CITY OF BRIDGEPORT

To the Honorable Board of Police Commissioners:

The following charges are hereby filed against John Williams

Patrolman of the Police Department of said CITY OF BRIDGEPORT:

FIRST— Violation of rule 93*- "Officers shall not discharge firearms in their performance of their police duties except:

A. For target practice

B. To defend himself from death or serious injury . .

.C. To defend another person unlawfully attacked from death or serious injury.

D. To effect the arrest or to prevent the escape, when other means are insufficient, of a convicted felon or a person who has committed a felony.

E. To kill a dangerous animal or, one that is so badly injured that humanity requires its removal from further suffering." Date of violation Sept. 10,1

Second -- Violation of rule 92* "Officers fi in a gun accidentally or intentionall except on a target range, shall report the circumstances to their superior officer immediately and shall file a written report of the incident within eight (8) hours." Date of violation Sept. 10, 1969

Third-- Violation of Rule 59* - "No member of the Department shall wilfully depart from the truth, either in giving testimony, or in connection with any legal official order received by him, or in his official duties." Date of Violation - Sept. 14, 1969

Dated at said BRIDGETGRT, this 26th day of November. A. D., 1969

*Rules and Regulations of the Department of Police, City of Bridgeport as adopted by the Board of Police Respectfully submitted,

Commissioners Sept. I, 1900

A. Wilsh

Superintendent of Police

BRIDGEPORT, CONNECTICUT

Com. O'Connor put John E. Williams under oath.

Com. O'Connor -- Did you take your gun out at any time? Williams -- Mr. President, on the advice of my Attorney, I can not answer this question as it intends to incriminate me.

Com. Wheeler -- I am a little bit amused by your Court Room drama. (Directed to Atty. Keefe.) Let's go forward with this case. I respect your client's rights, but you are dramatizing this whole matter simply because you didn't get witnesses names. I would like to ask two questions -- whether or not Mr. Williams is being treated fairly or not and whether he filed a written report.

> Did you file a written report concerning your activities at the scene of this incident?

Williams -- Com. Wheeler, I can not answer as it intends to incriminate me. Com. Wheeler--Mr. Williams, are you aware of the Rules and Regulations concerning the use of guns?

Williams -- Again, I can not answer, as the answer tends to incriminate me. Com. Wheeler -- Ptlm. Williams, do you know a Patrolman by the name of . Ptlm. Roger Cole?

Williams -- Sir, on the advice of my Counsel, that may intend to incriminate me at this time.

Com. Wheeler -- Do you feel that knowing him might intend to incriminate you? Williams -- I can not answer as it may intend to incriminate me.

Com. Fagan -- Did you at any time submit a report to Captain O'Leary or Insp. Leahy?

Williams -- Again, I must go back to the Fifth.

Com. Rinko--Were you a Patrolman in the Police Department prior to your suspension?

Williams -- Again, I have to go back to the Fifth Amendment.

Com. Rinko--Are you John Williams?

Atty. Keefe--This is reaching a point of becoming ludicrous. You know he is going to take advantage of the Fifth.

I hereby certify that the above is an excerpt of the Minutes of the Hearing of John E. Williams on December 11, 1969, and is a true copy of Ptlm. Williams' testimony.

Attest:

(Mrs.) Ruth N. puhrer, Stenographer II Bridgeport, Connecticut Police Department

Personally appeared before me 7.-1/11. Back.

who confirms the truth and accuracy of the above copy of transcript.

Cimilory Buildie my Comm 21/2 4-1-20

CITY OF BRIDGEPORT
DEPARTMENT OF POLICE
300 CONGRESS STREET
BRIDGEPORT
BRIDGEPORT
Superintendent of Police
JOSEPH A. WALSH

December 30, 1969

E. Williams
Street

Mayor HON, HUGH C. CURRAN

> Ptlm. John E. Williams 14 Wilson Street Bridgeport, Connecticut

Dear Sir:

At the regular Board meeting this date, the members of the Board unanimously passed a motion ordering your suspension as of 12:01 a.m., December 31, 1969 and directed this office to prepare charges against you for violation of Department Rule 98. (copy attached)

Said violation is alleged to have occurred at the Board hearing December 11, 1969 when you refused to answer questions specifically, directly and narrowly relating to the performance of your official duties. Such refusal is alleged to be conduct prejudicial to the good order and police discipline of this department.

A statement of charges will be forwarded to you advising you of the date of the hearing before the honorable members of the Board of Police Commissioners.

Very truly yours,

Joseph A. Walsh Superintendent of Police

JAW/jd Attachment

State of Connecticut

City - Tridgeport

Office of the Board of Folice Commissioners

To John Williams	
A Visition in the control of the con	
'Patrolman of the Police Department	nt
By the Authority of the Otate of Connecticut, you are hereby commanded	03
appear before the BOARD OF POLICE COMMISSIONERS OF THE CITY OF BRIDGEPORT, at their offi	ce
on the 13th day January A. D., 19.70 at 8 o'clock P. 1	ıı.
and show cause, if any you have, why you should not be dismissed from your office or positio	
or both, in said Police Department of said CITY of BRIDGEPORT, and to answer unto the charg	
filed against you before said Board of Police Commissioners, a copy of which said charges a	re
herewith attached to this summons.	
To any proper officer to serve and return.	
Dated at Bridgeport, this 5th day of January A. D., 1970	•••
Attest,	
Board of Police Commissioners	
0.100 1911	,

Clerk.

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En the Honorable Board of Police Commissioners:

The following charges are hereby filed against _____ John Williams

a Patrolman of the Police Department of said CITY OF BRIDGEPORT:

First— Rule 98 - "Failure of a member, either wilfully or through negligence, incompetence, or cowardice, to perform the duties of his rank or assignment, or violation by a member of any departmental rule, duty instruction, or order, or conduct prejudicial to the good order and police discipline of the Department, or conduct unbecoming an officer and a gentleman, which may not be specifically set forth in Department rules, may be considered sufficient cause for discharge, demotion, suspension, or other penalty." Alleged offense - Dec. 11, 1969,

Violation is alleged to have taken place on the above date when you refused to answer questions asked by the honorable members of the the Board of Police Commissioners.

Said questions specifically, directly and narrowly relating to the performance of your official duties.

Dated at said BRIDGEFORT, this _____Sth ___day of _____JANUARY_______A. D., 19.70...

Respectfully submitted,

January O. Mariale.

Superintendent of Police

DEPARTMENT OF POLICE
BRIDGEPORT, CONNECTICUT

HEARING

OF

JOHN E. WILLIAMS

JANUARY 13, 1970

BEFORE:

BOARD OF POLICE COMMISSIONERS

DEFENSE COUNSEL:

HUCH KEEFE, ESQ.

HEARING REPORTER:

SHIRLEY SAMBROOK

COM. O'CONNOS: Patrolman Williams, will you please stand up.

Patrolman Williams, you are charged with a violation of Rule 98 of the Rules and Regulations of the Bridgenort Police Department. Rule 98-failure of a member either wilfully or through negligence. incompetence or cowardice to perform the duties of his rank or assignment or violation by a member of any department rule, duty or instruction or order or conduct prejudicial to the good order and police discipline of the department or conduct unbecoming an officer and a gentleman which may not be specifically set forth in department rules may be considered sufficient cause for discharge, demotion or other penalty. This alleged offense, December 11, 1969. The violation is alleged to have taken place on the above date when you refused to answer questions asked by the honorable members of the Board of Police Commissioners. Said questions specifically, directly and narrowly related to the performance of your official duties. Mr. Williams, how do you blead?

PLT. WILLIAMS: Not guilty.

<u>RUTH</u> <u>BUHRER</u>, Arden Road, Trumbull, called to the stand, was examined and testified as follows:

DIRECT EXAMINATION BY MR. WALSH:

- Q Mr. Buhrer, where do you live? A I live at Arden Road, Trumbull, Connecticut.
- Q How long have you been employed by the City of Bridgeport? A Seventeen years.
 - Q What is your present classification?
 - A Stenographer 2.
- Q As Stenographer 2, are you assigned to the department clerk's office? A I am.
- Q As part of your duties is part of your duties to attend the meetings of the Police Board? A Yes. I do.
- Q Did you attend a meeting on December 11, the one where the Board held a hearing concerning Mr. Williams? A Yes.
- Q Did you in shorthand take down that portion of the hearing when Mr. Williams was testifying? A I did.
 - Q Did you later transcribe this testimony?
 - A Yes. I did.

MR. KEEFE: Mr. Chairman, perhaps you could clarify a point for me. I don't fully understand what Supt. Walsh's function is here. He's not a member of the Board. He has no legal status to be asking questions.

SUPT. WALSH: May I answer, Commissioner?

MR. KEEFE: I'd like the answer from him.

COM. O'CONVOR: He has every right to ask the questions. It was the Board that asked the Superintendent if he would suspend John Williams for the failure of Rule 98. That's how he came into this. Does that

answer you?

MR. KEEFE: It does.

COM. O'CONNOR: Okay Continue.

- Q Did you later transcribe this testimony?
- A Yes. I did.
- Q Mrs. Buhrer, I have here a notarized copy of the excerpt of that portion of the hearing concerning villiams' testimony. Will you please read it aloud.

MR. KEEFE: May 1 see that, Mr. Walsh? SUPT. WALSH: I'll introduce it.

ODM. O'CONNOR: Will you give each one a notarized copy.

SUPT. WALSH: I'll introduce it and you'll each get a copy.

MR. KEEFE: May I see it before she reads it.

COM. O'CONNOR: Continue.

A Com. O'Connor put John F. Williams under oath.

Com. O'Connor -- Did you take your gun out at any time? Williams -- Mr. President, on the advice of my Attorney, I cannot answer this question as it intends to incriminate me. Com. Wheeler -- I am a little bit amused by your court room drama. (directed to Atty. Keefe.) Let's go forward with this case. I respect your client's rights, but you are dramatizing this whole matter simply because you didn't get witnesses names. I would like to ask two questions -- whether or not Mr. Williams is being treated fairly or not and whether he filed a written Did you file a written report concerning your activities at the scene of this incident? Williams -- Com. Wheeler, I cannot answer as it intends to incriminate me. Com. Wheeler -- Mr. Williams, are you aware of the Rules and Regulations concerning the use of guns? Williams -- Again, I cannot answer, as the answer tends to incriminate me. Com. Wheeler--Ptlm. Williams, do you know a Patrolman by the name of Ptlm. Roger Cole? Villiams -- Sir, on the advice of my Counsel, that may intend to incriminate me at this time. Com. Wheeler -- Do you feel that knowing him might intend to incriminate you? Williams -- I cannot answer as it may intend to incriminate me. Com. Fagan -- Did you at any time submit a report to Captain O'Leary or Insp. Leahy?

Williams--Again, I must go back to the Fifth.

Com. Rinko--Were you a Patrolman in the Police Department prior to your suspension?

Williams--Again, I have to go back to the Fifth Amendment.

Com. Rinko--Are you John Williams?

Atty. Keefe--This is reaching a point of becoming ludicrous. You know he is going to take advantage of the Fifth.

I hereby certify that the above is an excerpt of the Minutes of the Hearing of John E. Milliams on December 11, 1969, and is a true copy of Ptlm. Williams' testimony.

Attest: Mrs. Ruth N. Buhrer, Stenographer II, Bridgenort, Connecticut, Police Department.

This was notarized by Captain James P. Breen here in the department on January 9, 1970.

SUPT. WALSH: Commissioner, I offer them to members of the Board and request they be made nart of the record.

JOHN E. LEAHY, 1384 Brooklawn

Avenue, Provisional Inspector, called to the stand
being duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION BY SUPT. WALSH:

- Q How long have you been a member of the Bridgenort Police Department? A Little over 27 years.
- Q Do you recall when you first were promoted to a supervisory position or rank of a sergeant?
 - A In 1952. September of '52. Seventeen years ago.
- Q Since that time you have been in a supervisory capacity as a lieutenant, a captain and provisional inspector?
 - A Yes, sir
- Q Did you hear Mrs. Buhrer testify? A Yes. I did.
- Q I would like to have you read the notarized copy of the minutes of the meeting concerning Mr. Williams' testimony. Just read it to yourself, Inspector.

(Whereupon the document was read by Inspector Leahy)

- Q Inspector, as an officer of this denartment would it be reasonable to say that your duties concern the good order, the conduct of men and proper discipline of this department?
 - A They do.
- Q Now based on your experience as an officer, in your considered judgment was such refusal by Williams to answer the questions of the Board conduct prejudicial to the good order and discipline of this department? A I would say so.

SUPT. WALSH: Thank you.

COM. O'CONNOR: Counsel, do you have any questions of Inspector Leahy?

CROSS EXAMINATION BY MR. KEEFE:

- Q Inspector, would it be fair for me to say that you are second in command in the Bridge port Police Department?
 - A Reasonable judgment, yes, sir.
- Q In this position are you ever called upon to advise, counsel and instruct the members on what is prejudicial to the good order and police discipline of the department?
 - A In certain cases, yes.
- Q During these sessions to the best of your recollection have you ever advised, counseld or instructed them that failing to answer questions at a hearing of this type held on December 11, 1969 would be prejudicial to the good order of police discipline of the department and would result in their suspension?
 - A This subject has never come up up until this hearing.
- Q In other words, you haven't had the opportunity to advise them? A No. I never had the opportunity.
 - O To your knowledge Mr. "illiams was never so advised?
 - A Subject was never broached.
- Q Generally, Mr. Leahy, you are aware are you not of a person't general right to- not to testify in proceedings of this type?

SUPT. WALSH: May I object? This is not an issue as to whether or not williams had the right to exercise a constitutional privilege but whether his refusal to answer the Board's questions was conduct prejudicial to the good order and discipline of this department. We are not charging Plt. Williams with taking the Fifth Amendment.

MR. KEEFE: Mr. Walsh is begging the question,
Mr. Chairman. The reason Mr. Williams did not answer
the questions asked of him was that he was taking

says he is not charging him with taking advantage of his Fifth Amendment right, he is ignoring completely the question, the issue. The question was whether taking advantage of your Fifth Amendment right to remain silent, which is what Mr. Milliams was doing on December 11, constituted conduct prejudicial to the good order and discipline of this department. It's impossible for anybody to sit there and say the Fifth Amendment isn't in issue when that is the reason he wasn't talking.

SUPT. WALSH: The issue is whether or not he answered the questions, not the reason why he didn't answer the questions, counsellor. There is quite a difference.

MR. KEFFE: You mean to tell me it makes no difference what the reason was? In any event, I intend to call on you to testify. So I would appreciate the opportunity of also cross examining Mr. Leahy on this point because it's our entire contention this was a Fifth Amendment---

SUPT. WALSH: I still state he is not charged with taking the Fifth Amendment. This is an opportunity, a right everybody has but if he refuses to answer the questions - and the Fifth Amendment concerns only criminal trials, counsellor.

MR. KFEFE: Is that right?

SUPT. WAISH: That's right, counsellor. He is charged with failing to answer the questions. That is all. There is law on that, counsellor.

MR. KEEFE: Thank you, Mr. Walsh. Mr. Chairman,

I obviously object to everything Mr. Walsh has said. Again, I restate our argument that it was a Fifth Amendment question. I'd like the opportunity of examining Mr. Leahy in that regard.

SUPT. WALSH: That is not the issue.

COM. O'CONNOR: That is not the issue, counsel.

The issue is that he did refuse to answer the questions submitted to him by the Board of Police Commissioners.

Whether he took the Fifth Commandment (sic) or not—the Fifth Amendment that does not make any difference.

The fact that he would not answer the questions asked of him by the Board of Police Commissioners—

MR. KEEFE: Mr. Chairman, you cannot limit the scope of your examination to simply what happened that night. You have to go one step beyond and say why he didn't answer it. It wasn't as though he was obstinate and completely refusing to coonerate with the Board without any right whatsoever. He had a constitutional right to do what he did. He took advantage of his constitutional right and the Board suspended him for it. Now Mr. Valsh is attempting to come here tonight and say the constitutional issue isn't involved. That is the most ludicrous thing I have heard in quite a while.

SUPT. WALSH: Counsellor, do you want me to read the Fifth Amendment so I can straighten out your thought on the matter?

MR. KEEFE: Mr. Walsh, if you are going to read the Fifth Amendment, also read the 2000 Supreme Court cases interpreting it.

SUPT. WALSH: I have five within the last three

years.

MR. KEEFE: I know precisely what the Fifth

Amendment says and I realize you are limiting your
interpretation to criminal cases but I hesitate to open
this book and read 20 pages of law which interprets
it to bring it down to administrative hearings,
including police tribunals and including legislative
boards.

SUPT. WALSH: When you sum up those, bring them up.

MR. KEEFF: In any event, Mr. Chairman, we contend that the Fifth Amendment is the entire question here tonight. Whether an officer can take the Fifth Amendment in a proceeding of this type without losing his job. I would like to ask Mr. Leahy a few questions in relation to this.

COM. O'CONNOR: That's perfectly all right, counsel, but the text of this is that your client, Williams, was asked questions by the Board of Police Commissioners and he failed to answer them. Whether he took the Fifth Amendment or not he failed to answer questions asked. The fact that there is probably more questions that the Board wanted to ask at the time, as you yourself said it was getting out of bounds.

MR. KEEFE: Mr. Chiarman, the only question we are here tonight for is to determine whether or not Plt. Williams refused to answer questions asked, if that is so we can end this hearing now because we wholeheartedly agree and stipulate that he did.

COM. O'CONNOR: He pleaded not guilty.

MR. KEEFE: He pleaded not guilty to a violation of Rule 98, which we claim not answering questions on the ground it might tend to incriminate him was not a violation of Rule 93.

COM. O'CONNOR: Well, I must rule that it is a violation of Rule 98. My ruling as Chairman of the Board.

MR. KEEFE: You are being a bit premature.

The hearing isn't over yet.

ODM. O'CONNOR: That's quite right but you continue to insist upon it, that the reason is that he took the Fifth Amendment. I contend that he refused to answer the questions of the Board at the hearing.

Now, you may proceed if you care to ask
Inspector Leahy any further questions.

EXAMINATION CONTINUED BY MR. KEEFE:

- Q Inspector Leahy, are you generally familiar with the right of a person to take advantage of his Fifth Amendment rights to remain silent and not incriminate himself in a court proceeding? A Generally, yes.
- Q Are you aware also that a person may take the Fifth Amendment right in a proceeding outside of court where he is under oath? A I thought it was confined strictly to criminal cases.
- Q May I ask you a general question.? Do you recollect a recent meeting before a Senate Sub-Committee in which General Turner and Sgt-Major Wildredge of the Army testified?
 - A I remember reading about that.
- Q Do you remember whether General Turner and Sgt-Major Wildrege took the Fifth Amendment in those cases?

COM. O'CONNOR: Mr. Counsel, I must object to this line of questioning. This line of questioning is out or order. We are here for one sole purpose, that he did not answer the questions. If you want to continue with Inspector Leahy on that ground, it is perfectly all right but to bring up something that happened in Washington that we are not familiar with is, I believe in my small knowledge of the case, not a- it was a court case and this is not a court case.

SUPT. WALSH: May I comment, Commissioner. Gen. Turner did not take the Fifth. General Turner involved the Superintendent of Police, Jim Conlas (phonetic) in Chicago and he talked for five days.

- Mr. Leahy, are you familiar with a proceeding recently in New Jersey where Newark Mayor Addonizio took the I read articles about it. Fifth Amendment? A
- On the Chairman's instructions I won't proceed in this line of questioning although Mr. Walsh did bring it up. Mr. Leahy, to summarize your testimony to the best of your knowledge, Plt. Williams and for that matter any other patrolmen on the Bridgeport Police Department, was never specifically instructed, advised or counseld that refusing to answer a question in a Board of Police Commissioner's hearing on the ground that it might tend to incriminate him would result in his suspension because it was "prejudicial to the good order and police discipline of this department"?
 - Plt. Williams was never instructed by me.
- But to your knowledge he or no other officer in this department was instructed in that respect?
 - I can't testify to that. I don't know what other

instructions these men were given.

Q I am asking you, Inspector, whether you had any knowledge of it? A I don't have any knowledge.

MR. KEEFE: Nothing further. Thank you.

REDIRECT EXAMINATION BY SUPT. WALSH:

- Q Would you consider a case where an officer questions a subordinate member of the department and the subordinate member fails to answer, would you consider this insubordination?
 - A It's a form of insubordination.
- Q Would you consider insubordination contrary or prejudicial to the good order and police discipline of this department? A If it was in the line of police questioning, yes.
- Q While you're down in New Jersey did you recall reading of a judge that refused to answer questions of the grand jury? A I don't recall that.
- Q Do you recall the judge was dismissed as a judge?
 For failing to answer the questions?
 - A I don't recall that, sir.

SUPT. WAISH: That's all, Inspector.

RECROSS EXAMINATION BY MR. KEEFE:

- Q Mr. "alsh has obened up a new scope here. Inspector, in deciding whether or not it was insubordination for a police officer to refuse to answer questions of a "super or" would you consider the reason for answering or not answering the questions before deciding that it was insubordination?
- A If it was outside the line of police work, I would consider it but if it was in direct connection with his police duties I would consider it insubordination.
 - O Regardless of the reason? A Regardless of

the reason.

MR. KEEFE: Thank you.

SUPT. WAISH: Thank you, Inspector.

COM: O'COMNOR: Counsel, do you have any

witnesses?

MR. KEEFE: Yes. I do. Plt. Williams take the stand, please.

JOHN WILLIAMS, 76 Wentworth Street, Bridgenort, being duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. KEEFE:

Q Officer, you heard the testimony of Mrs. Buhrer, and you read the excerpt of the transcript submitted into evidence by Supt. Walsh in his capacity as prosecutor against you. Specifically, you read the portion where on December 11, at the former hearing you refused to answer questions addressed to you by Coms. O'Connor, Theeler, Fagan and Rinko. Would you plese tell the Board why you refused to answer those questions.

A The reasons that I didn't answer the questions were number one, on advice of my counsel; number two, we had inadequate time to prepare a defense not knowing the specific charges set down or as far as what documents that were going to be forwarded and testified here against me; and that I figured that night that anything I stated would be self-incriminating.

- Q In other words, Officer, you were taking advantage of your Fifth Amendment right? A Yes, sir.
- Q You so specifically stated in answer to a question by Com. Rinks that "Ihave to go back to the Fifth Amendment"; is that correct? A Yes, sir.
- Q Did you at any time during the course of that proceeding feel that by taking advantage of your Fifth Amendment right you were partaking in conduct prejudicial to the good order and police discipline of the department in violation of Rule 98? A At no time did I think that.
- Q Were you at any time how long have you been a

 Bridgenort police officer? A Approximately four and a
 half years.

- Q What sort of training have you gone through?
- A I went through school training with the police department and early on-the-job training before regular assignment.
- Q Have you been trained outside of these early experiences? A No, sir. Just training here in school.
- Q During this school training, and any other lectures you may have received, were you ever told that by taking advantage of your Fifth Amendment right in a proceeding of this sort or failing to answer a question before a Board of Police Commissioners on advice of your lawyer you were jeopardizing your job and in fact would be suspended?
 - A No, sir. At no time.
- Q Were you ever told during your training what exactly Rule 98 meant when it said "conduct prejudicial to the good order and police discipline of this department"?
 - A No. sir.
 - Q On December 11, 1969 what was the Board's finding?
- A The Board found me guilty and ordered my susmension until December 31, to midnight of December 30, going to December 31. Then I was to return to work.
 - O What were you found guilty of?
- A Three violations of department rules and regulations.
 Rule. 98 was not one of them.
- Q What were they? A To my knowledge right now I don't know what the numbers are.
- Q In effect were they because of improper discharge of firearms and filing a false report and failure to---
 - A And failure to make a report. Those were the three.
- Q How many total days were you suspended as a result of this? A Forty days.

- Q That suspension would have expired on what date?
- A December 30.
- Q And when did you receive notice of your new susmension?
- A December 30, approximately 11:05 p.m.
- Q Were you prepared to go wo work on the evening of December 30? A It was supposed to be the morning of December 31. At midnight that night it would be December 31, and I was supposed to report to work midnight. Just before I reported to work I received the suspension notice.
- Q Did you in effect feel that you had had your hearing and that you had been found guilty and that you had served your punishment? A Yes, sir.
 - Q Were you surprised by the new suspension?
- A To tell you the truth I had to read it twice to believe it.
 - Q Were you given any forwarning of it?
 - A None whatsoever.
 - Q Have you been suspended since that time?
 - A Yes, sir.
 - Q Have you been working? A No. sir.
- Q Have you worked at all since your original suspension in November? A No. sir.
 - Q When was your original suspension?
 - A November 20, 1969.
- Q You haven't collected any money from any source pay-wise since that time? A That's right, sir.
- Q And it was on my advice that you took advantage of your Fifth Amendment right on December 11? A Yes, sir.

MR. KEEFE: Nothing further. Thank you.

COM. O'COPNOR: I'd like to ask one question of Mr. Williams. It is true that the police department

did ask you que stions at that hearing?

THE MITNESS: Yes. sir.

COM. O'COMMOR: And it is true that you refused to answer them?

THE WITNESS: On advice of my counsel, yes, sir. COM. O'CONNOR: Okay. Supt. Walsh, would you

like to ask any questions?

CROSS EXAMINATION BY SUPT. WALSH:

- Q What training have you had in this department?
- A When I came on the job, nine weeks training in the school, normal schooling.
 - Q You have been in in-service training school?
 - A I attended meetings for this in-service training.
- Q Which is actually, if you total it, it would be more than your nine week basic training?
- A No, sir. I only- I think in the four and a half years I have only attended six meetings for in-service training but I did attend other meetings here.
- Weren't you instructed in the training school and by officers in this department that you are required to tell the truth when asked a question by a superior or a member of the Board of Police Commissioners who manage and control this police department? A To tell the truth, sir?
 - Q To tell the truth. A Yes. sir.
- Q When you refuse to answer a question, is that telling the truth? A I honestly can't answer that, sir.
 - Q It's a very simple question. Try.
 - A Would you repeat the question again.
- Q If you refuse to answer a question and avoid giving-Are you performing your solemn duty to the people you serve and

to this Board and superior officers by refusing to answer that question? Aren't you avoiding telling the truth, and are you not telling the truth when you avoid answering the question?

- A You are not avoiding the truth.
- Q What? What are you avoiding?
- A You are avoiding your self-incrimination.
- Q Self-incrimination. We are not talking about self-incrimination. What are you avoiding?

MR. KEEFE: I object, Mr. Chairman. We are talking about self-incrimination.

SUPT. WAISH: We are?

MR. KEEFE: That's all we are talking about.

SUPT. WALSH: All we are talking about is failure to answer those questions.

Q Were you avoiding the truth? A No, sir.

COM. O'CONNOR: Superintendent, if I might interject for a minute. He was asked if these questions were asked by the Board of Police Commissioners and he admitted they were. He admitted he did not answer them. Does that answer your questions?

SUPT. WALSH: That's right. No further questions.

COM. O'CONNOR: Counsel, would you like to sum

up or do you have any other witnesses?

MR. KEEFE: I have two other witnesses. Mr. Walsh, would you take the stand, please.

JOSEPH WALSH, 665 Huntington

Turnpike, Bridgeport, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. KEEFE:

- Q Mr. Walsh, what is your position on the Bridgeport
 Police Department? A Superintendent of Police.
 - Q Is that the equivalent of Chief of Police?
 - A Yes, sir.
 - You are the head of the Bridgeport Police Department?
 - A Yes, sir.
 - Q How many years have you occupied that position?
 - A It will be nine years this February, sir.
- Q During that time have you had any opportunity to counsel, advise, educate or instruct your policemen with respect to Rule 98? A In respect to general rules that fall--
- Q With respect to Rule 98? A No. I haven't personally but each member of the department is given a copy of Rules and Regulations.
 - Q Have you had an opportunity to instruct them?
 - A In the past nine years, no, sir.
- Amendment right at a hearing of this sort would constitute a violation of that rule? A No. No one has ever taken advantage of it. We are not questioning his privilege of taking the advantage. We are questioning the fact that he did not answer a superior officer, which is insubordination and in my opinion conduct contrary to the good order and police discipline in this department.

Q Are you aware, Mr. Walsh, of the reason why Plt. Williams didn't answer the questions?

A I am aware of why he did. I am aware that you advised him.

Q Did you hear Officer Williams testify that he was taking advantage of his Fifth Amendment right? A I did.

Q Do you feel then by taking advantage of his Fifth

Amendment right he participated in conduct prejudicial to the good discipline of the department?

A No. I don't believe by taking advantage of a . constitutional privilege that he did anything wrong. I think he did the wrong by not answering the questions.

Q Mr. Walsh, you mentioned before that you didn't feel the Fifth Amendment right applied to proceedings in this type namely, administrative hearings; is that right?

A I don't believe it does, sir.

Q Are you familiar with the case, Watkins v. United States? A No, sir.

Q Are you familiar with Quinn v. United States?

A No. sir.

Q Are you familiar with the numerous other cases which hold that it does apply to administrative, legislative---

A I am familiar---

Q Let me finish. Administrative, legislative and board proceedings of this type? A I am familiar with many cases that I can quote where a Supreme Court has said the officer in a disciplinary action does not have the right to refuse to answer questions concerning directly his duties as a policeman. In fact the last case is Silverio up in the Massachusetts Supreme Court. The one before it was Broderick v. Gardner in New York. The one before that was Emmons, New

Jersey Supreme Court. I can go on and on.

Q I am not going to get into a legal argument with you, Mr. Walsh, but as you interpret these questions they deprive a police officer of his Fifth Amendment right.

A No. They don't deprive him of the right to take the Fifth but they do not relieve him of his responsibility to the people of Bridgeport and to his department to truthfully answer questions of an inquiry by the Board of Police Commissioners.

Q Do you feel by not answering the questions and by citing the Fifth Amendment as the reason for not answering the questions you are not truthfully responding to the questions?

A I believe by not answering the questions it was not truthfully responding to the questions and that he was in violation of the rule which is prejudicial to the conduct of this department. I am not and this Board is not claiming any wrongdoing on the part of the Fifth Amendment or his right.

He has a right claim- a right to claim the Fifth Amendment.

That we concede. That is set by the Supreme Court and it's been agreed by the Supreme Court. The Supreme Court has also agreed that in a judicial hearing where Plt. Filliams was not requested to waive his right, sign an immunity waiver in a criminal matter he must answer questions of the Board. There is a constitutional right for him to take advantage of the Fifth Amendment but there is no constitutional right for him to be a policeman if he fails to meet the obligations to his superiors.

Q You admit that he has a right under the Fifth Amendment even in a police board hearing then to claim his Fifth

Amendment? A He has a right to claim but as to the validity of the claim it's been settled by the Supreme Court in the cases that I quoted.

Q Have you checked with the office of Corporation Council

- on this matter? A Yes. I have talked to the office.
 - Q Did you invite them to be here tonight?
 - A No. I didn't.
- Q Were you present, Mr. Walsh, at the Executive Board hearing on December 30? A . I was, sir.
- Q Was the second suspension of Plt. Williams introduced as a subject topic of discussion at that time?
 - A It was, sir.
- Q By whom? A By the entire Board, I believe.

 I believe that Com. Theeler wasn't at the meeting.
 - 0 Who was the initiator of the discussion?
 - A I think it was a general discussion that came up.
 - Q Who brought it up initially?

COM. O'CONNOR: I think you are out of bound, counsel. Anything that happens in an Executive Board is not - just concerns the members of the Board and whoever they invite to the Board meeting.

MR. KEFFE: I disagree for this reason.

Mr. Walsh tonight is acting as a prosecutor. If he had an opportunity to be present at the Fxecutive

Session on December 30, defense counsel should also have been present.

COM. O'CONNOR: Let me correct you. He is not the prosecutor. He was aksed by the Board to bring the charges against John Williams. He is not the prosecutor.

- Q Mr. Walsh, are you a member of the Board?
- A No, sir.
- Q You ordinarily attend Executive Sessions?
- A Yes, sir.
- Q Is there some authority for this?

A No. I act in an advisory canacity to the Board.

The Board is commised of civilians and they question me on traffic matters, matters concerning the welfare of the city.

Q In other words, you stay out of the Board hearings unless they have a question and then they summon you in?

A No, sir. I am at all Board hearings in Executive Sessions. Unless it is something they would talk to by themselves, I would normally attend the Executive hearings.

Q As an advisor? A As an advisor and on occasion to answer their questions.

Q Do you wote? A No, sir.

Q Do you remember if the Board voted on the suspension of John Williams on the 30th of December?

A They did, sir.

Q Do you remember what that vote was?

A Unanimous.

COM. O'CONNOR: That was not an Executive Session.

This was at a meeting of the Board and motion was

made by Com. Fagan and seconded by Com. Lindmark.

Q Mr. Walsh, was anyone else present besides the members of the Board and yourself at this meeting?

A You're speaking of the Executive Board? There are two meetings.

Q At the one where Mr. Williams was suspended?

A Newspaper reporter, Capt. Lombardi, the Clerk of the Board and Mrs. Buhrer, the stenographer.

Q was Mr. williams there? A No, sir.

Q Was there anyone there representing Mr. Milliams?

A No, sir.

Q Was anybody invited to represent Mr. williams?

A No, sir.

Q Mr. Walsh, after the initial suspension in November of Mr. Williams, for allegedly illegal discharging firearm, did you not tell me that it was the practice of the department to suspend a patrolman pending a hearing where you felt there was a danger to the community by having him on the job?

A No. That's optional. A captain or superintendant may suspend for any violation as long as the captain suspending submits a report to my office to justify the suspension. I in turn, if I suspend, justify my suspension to the Board.

Q Getting back to my question. Did you tell me that the reason the suspension occurs is that you make a judgment that the person involved may present a threat to society?

A That isn't the- the incident of firing the gun, which was the original charge, that was one of the reasons why he was suspended. I would also say that if a violation is such that it is affecting the morale of the entire department and it is believed by the suspending officer or by the Board that the suspension should take place immediately it is within their right or the suspending officer who has the power under the rules and regulations or charter of the city ordinances.

Q What was the reason for suspending Plt. Williams on December 30, mending this hearing?

A Because it was alleged that he violated Rule 08, I believe it was.

Q "ould it not have been possible to let him resume his employment as a policeman pending the hearing?

A I think the Board took into consideration the morale and discipline of the department at the time and it is entirely in their power to suspend.

Q Did you recommend a suspension? A Did I recommend?

- Q Yes, sir. A I don't believe I did, sir.
- Q Just to clarify the record, you do not contend that a police officer does not have a right to take advantage of his Fifth Amendment right at a hearing of this type held on December 11, 1969? A May I have that again? You have a couple of "denies" and "rights".
- Q I'll paraphrase it. Do you agree with me that a police officer does have a right to take the Fifth Amendment and remain silent at a hearing of the type held on December 11, 1969? A I believe that a person going home late at night to his wife has the right to take the Fifth but--
 - Q Would you elaborate?
- A In other words, I believe that anybody can claim the Fifth in any manner but the validity of it in a hearing of this Board, a disciplinary hearing I think has been settled by the Supreme Court. In fact, I know it has and it has no bearing in a non-criminal matter. If Williams had testified and involved himself or he might later have been arrested, and there was no issue of an arrest being made in this case, if he had testified, you as attorney could have prevented the testimony getting in because it was compelled from him by his duty which he is obliged and his obligation to the Board and to the people he serves.
- Q Did you testify carlier, Mr. Walsh, that you did think a policeman had a Fifth Amendment right. It was simply the validity of it, the assertion that you were questioning?
- A I think villiams might have claimed any right at all. That is not the issue. He is not suspended at this time for taking the Fifth Amendment but he is suspended for failing to answer questions. He had that right. He took it and that was not the issue and is not the issue here tonight.

Q In other words, Mr. Walsh, a person does not lose his constitutional rights when he puts on a uniform?

A No.

Q And he does not lose his constitutional rights when he comes before the Bridgemort Board of Police Commissioners any more than he does when he goes into a court of law?

A Into a court of law there is no doubt that into a criminal court the Fifth Amendment is valid but, as I said, this was a disciplinary hearing.

Q We are not questioning that at all. I am saying that generally a person's constitutional rights remain with him whether he is a policeman, whether he is before a Board of Police Commissioners or whether he is in the Eighth or Fifth Circuit Court? Generally, not the Fifth Amendment? His constitutional rights generally?

A I would say he had a right to claim it but the validity of it or, I don't believe the Fifth Amendment was an excuse for him not to fulfill his duties to the Board and help them into the inquiry as to whether or not the claim was valid that was being made. I think his obligation was to the Board of Police Commissioners of the department and to the people that he served.

Q In other words, would it be fair to say that you think his duty to testify superceded his duty to remain silent under the Fifth Amendment? A I believe that, sir.

MR. KEEFE: Nothing further. Thank you. EXAMINATION BY COM. WHEELFR:

Q Supt. Walsh, in your experience as a police officer and your knowledge of previous cases of members taking the Fifth Amendment would you say that one identifying himself by name could be construed as- I mean a police officer I am talking about- could be or incriminate him I should say, to his sumeriors?

- A I believe that any question that williams answered that night would not incriminate him in a criminal matter. There was no intention of pressing this matter any further. The second reason that evidence secured in a hearing of this type is not admissible in a criminal court because the courts' have ruled that it is a policeman's responsibility to be honest and forthright and candid in testifying in any matter concerning his official performance of his duty.
- Q Are the policemen trained and instructed as to the table of organization of the chain of command, whatever you want to call it, from the Commissioners down or from the patrolmen up? A They are, sir.
- Q They are aware of the fact that the Commissioners are their superiors? A They are, sir.
- Q They are also advised, instructed that they are to give truthful information about all matters pertaining to their conduct? A They are, sir.
 - Q As policemen? A Yes, sir.
- Q would you feel that it would impair the efficiency of the police department and the protection of the community if each natrolman elected to keep as he saw fit his duties as a policeman from his superiors and from the citizenry of his city? A I believe it would be detrimental and break down the entire morale of the department.

MR. KEEFE: I have a couple of more questions.

EXAMINATION BY MR. KEEFE:

- Q Mr. Walsh, to your knowledge has anyone ever prior to December 11, on the Bridgenort Police Department taken the Fifth Amendment in a proceeding before the Board of Police Commissioners? A No. sir. Never.
 - Q HAs a member of the police department ever taken the

Fifth Amendment in a court proceeding? A They have not, sir.

- Q Have they ever taken it in any legislative proceeding of any type either Bridgeport or Hartford or any other town?
 - A They have not, sir.
- Q Mr. Walsh, you are aware, of course, that the offense with which Williams is charged took place on December 11?
 - A Yes, sir.
- Q Prior to the Board of Police Commissioners retire to deliberate that night? A Yes, sir.
- Q And that they had time during that deliberation to consider all offenses including his taking the Fifth that night?

A It would be in assible, sir. When this violation took place and the Board was aware of them, we could not or the Board could not charge Mr. Williams because in the charter of the City of Bridgeport when a person is brought up on charges, he must be given six days notice to prepare on a hearing for the hearing on that charge. Plt. Williams could not have been arraigned or brought to task for failing to answer the questions that night. It would not comply with the requirements that the Board must follow under our City Charter.

MR . KEEFE: Thank you.

COM. O'CONNOR: Okay, sir. That's all. Do you have any further witnesses?

MR. KEEFE: Capt. Stevane, if he is here please.

<u>WILLARD</u> <u>STEVANE</u>, 350 East Avenue, Bridgenost, called as a witness, being duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. KEEFE:

- Q Would you tell the Board what your position is in the denartment? A Police Captain presently in charge of the Detective Division.
- Q Were you at one time a Company Commander or Group Commander of some type over officers in the department?
- A Prior to the Detective Division I was a Platoon Commander.
- Q During that time as a Platoon Commander did you have the opportunity of advising the patrolmen or officers generally with respect to their rights and obligations under the Rules and Regulations of the department?
- A Not to any specific rules, as I recollect. I saw that the book of Rules and Regulations were dismissed, distributed to the personnel.
- Q Very well. To your personal knowledge, Captain, do you recollect that any time during your years as Platoon Commander or for that matter as a supervisory officer in the department, ever telling a patrolman, including Officer villiams, that by taking advantage of his Fifth Amendment right to remain silent at a proceeding of this type he would be partaking in conduct prejudicial to the good order and police discipline of the department in violation of Rule 98?
 - A I don't recollect ever discussing that. No.
- Q Were you at one time the commanding officer of Plt. Williams? A Yes. I was.
- Q During that time you don't recollect ever telling him directly about what I just said? A No. I don't

recollect.

MR. KEEFE: Nothing further. Thank you. CROSS EXAMINATION BY MR. WAISH:

- Q Capt. Stevane, how long have you been an officer in this department? A I became a Sergeant in 1958 having been a patrolman and a detective prior to that.
- Q Based on your experience as an officer, in your considered judgment was the refusal of Plt. Williams to answer the questions of the Board conduct prejudicial to the good order and discipline of this department?
- A The only thirdhand knowledge I have of his refusal is what I heard tonight.
 - Q Based on what you heard tonight?
 - A Yes, I would say it was.
- Q You would say what? A That it was prejudicial to the good of the department.

SUPT. WALSH: Thank you, Captain.

MR. KEEFE: I have a further question in that regard. Capt. Stevane, would you still say it was if the man was taking advantage of his Fifth Amendment right to remain silent?

THE WITNESS: As a semi-military organization I'd consider, as I consider the police denartment, I feel it would be.

COM. O'CONMOR: Do you have any further witnesses?

MR. KEEFE: Lieut. Basile, please.

JOHN BASILE, 333 Vincelette Street, called as witness, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. KEEFE:

- Q Lieut. Basile, what is your present status in the department? A Lieutenant in the platoon, sir.
- Q Were you at one time or are you now the Assistant
 Training Officer? A Well, I fluctuate back and forth,
 when there is training to be done. Then there is training to
 be done, I go up here at the training center and when it is
 over with, I go down to the platoon again.
- Q During your canacity as assistant training officer do you advise, or counsel the men with respect to the rules and regulations of the department? A Yes, sir.
- Q Do you remember at any time personally advising either Officer Williams or any other patrolman or member of the department that by taking advantage of his Fifth Amendment to remain silent at a proceeding of this type, he would be violating Rule 98? A No.

MR. KEEFE: Nothing further.

CROSS EXAMINATION BY SUPT. WALSH:

- Q When you are attached to the training office and in recruit training and in-service training, do you advise the men of the existence of a chain of command within the department?
 - A Yes, sir.
 - Q Do you advise them the necessity of discipline?
 - A Y28.
- Q Do you advise them the necessity of cooperating and telling the truth to superior officers? A Yes, sir.
- Q As an officer, do you believe in your considered judgment, do you believe that refusal by Plt. Filliams to answer

questions that were asked by the Police Board, was his conduct prejudicial to the good order and discipline of the department?

- A It depends, sir, if---
- Q Answer the question yes or no. Lieutenant.

MR. KEEFE: I think the man should be given an opportunity to elaborate.

COM. O'CONNOR: Do you understand the question?

THE 'TINESS: Yes. I understand the question.

If his life or his freedom is in jeopardy, he has the right in my opinion---

Q In this case his life wasn't in jeopardy.

MR. KEEFE: Give him a chance.

- Q You heard the question. In your opinion--MR. KEEFE: Let him answer it.
- Q In your opinion the questions asked by the Board, was his refusal prejudicial to the good conduct and the discipline of this police department? A In the line of duty it wasn't in order, no.
 - Q What do you mean it wasn't in order?
- A If he didn't answer the questions that the Board asked him, if it was in the line of duty his conduct and what not, then he should have answered.
 - Q Did you hear the questions here tonight? A Yes.
 - Q Were they all in line of duty? A Yes.
- Q Vell, was his conduct in refusing to answer the questions prejudicial to the good order and discipline of this department? A No.
 - Q Was his conduct----

MR. KEEFE: He answered the question.

SUPT. VALSH: I don't think he got the question.

MR. KEEFE: He answered it.

Q Was his conduct in refusing to answer the questions--

COM. FAGAN: For the benefit of you people that think it's a laughing matter, you are going to be put out of the courtroom here or whatever room this is. This is no joking matter. There's another one. So help me, he'll get it. It's no joke now, folks. Here's a policeman and you can laugh all you want but it's no joke. Here's a policeman here.

MR. KEEFE: Mr. Fagan, I fully realize more than you or anyone else here tonight what sort of a matter it is. You don't have to instruct me and I don't think you have to instruct them.

COM. FAGAN: I am instructing them.

MR. KEEFE: I don't think they need your intimidating language either.

COM. FAGAN: We don't have to have all that clowning going on out there.

MR. KEEFE: I think the Chairman can instruct them without you yelling at them.

COM. WHEELER: I think you must realize,
Mr. Keefe, that it is the prerogative of the
Commissioners here to maintain order and have an
orderly meeting. Not yourself and not theirs but
ours. Mr. Fagan is certainly a member of this
commission.

MR. KEEFE: I think it's the Chairman's job.

COM. WHEELER: What you think is immaterial.

How we conduct this meeting and who is going to speak and when they speak is entirely our prerogative and he is exercising his prerogative and he cautioned the people out there to keep quiet. This is a serious meeting. He means it and I wholeheartedly agree.

We don't need help from you or anyone else to tell us how to conduct the hearing.

COM. O'CONNOR: We'll continue the hearing now.

For the record, let us get the question straight.

You answer the way you want. "ill you please remeat the question, Supt.

MR. KEEFE: I think the stenographer might be able to do it better.

SUPT. WALSH: I can repeat it.

MR. KEEFE: I'd like the question you originally asked.

COM. O'CONNOR: Can you read the question back, please.

(whereupon the last question was read by the reporter. P. 44)

Q I'll ask you the question. Was his conduct in refusing to answer questions specifically concerning his duty as a policeman, the questions being asked by the Police Board, was this conduct prejudicial to the good discipline of this department? A Yes, sir.

SUPT. WALSH: No further questions.

MR. KEEFE: I have a few.

REDIRECT EXAMINATION BY MR. KEEFE:

Q Lieutenant, as an Assistant Training Officer and whatever your other present status is, you are directly under the authority of Supt. Walsh, are you not? A Yes, sir.

Q For that matter so are the other two officers who testified here tonight, Capt. Stevane and Inspector Leahy; is that true? A Yes, sir.

MR. KEEFE: 'I have nothing further. Thank you.

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COM. O'CONNOR: I order the Board into an executive session of a further determination of the Board.

(Whereupon the Board was in deliberation.)

COM. O'CONVOR: Plt. Williams, will you please stand. The Police Board, the Board of Police

Commissioners in an executive session finds you guilty as charged of violation of Rule 98 and it is the Board's decision that you be discharged as a member of the police department of the City of Bridgeport.

That concludes the hearing.

BRIDGEPORT POLICE DEPARTMENT

BOARD OF POLICE COMMISSIONERS :

JANUARY 13, 1970

JOHN E. WILLIAMS

This is to certify that the foregoing is a true and correct transcript of the proceedings in the above cause heard before the Bridgeport Board of Police Commissioners, at Bridgeport, on the 13th day of January, 1970.

Dated at Bridgeport, Connecticut this 19th day of January, 1970.

Shirley Sambrook Court Stenographer Notary Public in and for State of Connecticut

My commission expires 1973.

TO THE COURT OF COMMON PLEAS, TO BE HOLL OUT ENDSERORT, TO AND FOR THE COUNTY OF FAIRFIELD, ON THE FIRST TUESDAY OF PUBRULARY, 1970, COMES: JOIN WILLIAMS a resident of the City of Bridgeport, County of Fairfield and State of Connecticut, appealing from a decision of the Board of Police Commissioners of the City of Bridgeport, and complains and says: 1. On September 10, 1969, and for a long time prior thereto, the plaintiff in this action was a patrolman duly employed by the Department of Police of the City of Bridgeport. 2. On or about November 20, 1969, at a meeting of the Board of Police Commissioners at which the plaintiff was not present, said Board summarily suspended the Plaintiff from duty without due process and ordered him to appear at a hearing of said Doard on December 11, 1969 at 8:00 P. M. to answer the following charges placed against him: (A) Violation of Rule 93 - "Officer shall not discharge firearms in their performance of their police duties except: (a) for target practice (b) to defend himself from douth or serious injury (c) to defend another person unlawfully attacked from death or serious injury (d) to effect the arrest or to prevent the escape, when other means are insufficient, of a convicted felon or a person who has committed a felony (e) to kill a dangerous animal or, one which is so badly injured that humanity requires its removal from further suffering. (B) Violation of Rule 92 - *Officers firing a gun accidentally or intentionally, except on a target range, shall report the circumstances to their superior officer immediately and shall file a written report of the incident within eight hours." (C) Violation of Rule 39 - "No member of the Department No Member of the Deput. BEST COPY AVAILABLE

charges against him in violation of Dapartment Rule 98 which states as follows: "Failure of a member, either willfully or through magliganca, incompatence, or cowardice, to perform tha duties of his rank or assignment, or violation by a member of any departmental rule, duty, instruction, or order, or confuct projudicial to the good order and police discipline of the department, or conduct unbecoming an officer and a gentleman, which may not be specifically set forth in department rules, may be considered sufficient cause for discharge, demotion, suspension, or other penalty." 8. On January 5, 1970, the Plaintiff was served with a subpoens ordering him to appear before a Board of Police Commissioners hearing or January 13, 1970 on a charge of violation of Rule 98 of the Rules and Regulations of the Bridgeport Police Department, and on said charge (copy attached horato), it stated: "Violation is alleged to have _ 'en | Ace on the above date (December 11, 1969 when you refused to answer questions asked by the homorable members of the Board of Police Commissioners. Said quastions specifically, directly and narrowly relating to the performance of your official duties." 9. On said January 13, 1970, a public hearing was hold before the Board of Police Commissioners at the Bridgeport Police Department Headquarters at which time the Plaintiff appeared with his witnesses and was represented by counsel. 10. At said hearing on January 13, 1970, Mrs. Ruth N. Buhrer, the stenographer at the original hearing on December 11, 1969, tostified that the Plaintiff, JOHN WILLIAMS, refused to answer questions asked of him by Board members and relied on his Fifth Amendment rights. An excerpt of the testimony on LUCH AND TRAUL December 11, 1969 was submitted into evidence thBough Mrs.

Buliros (copy attached horeto). 11. Following said hearing and testimony, the members of the Board of Police Commissioners deliberated and then announced verbally through its Chairman, William O'Connor, that said Board had found the Plaintiff guilty of violation of Rule 98 of the Rulas and Regulations of the Department of Folice, City of pridgeport, and as a panalty for said violation, the Plaintiff was discharged from the Department of Police. 12. In arriving at said decision, said Board of Police Commissioners acted arbitrarily, illegally, unconstitutionally and unreaconably so as to abuse its discretion. 13. In arriving at said decision, said Doard of Police Commissioners acted illegally and unconstitutionally in that it discharged the Plaintiff, JCHN WILLIAMS, from his position as an officer of the Eridgeport Police Department solely because he legally and rightfully took advantage of his right to remain silent under the Fifth Amendment of the United States Constitution, at the former Board hearing on December 11, 1969. 14. In addition, said Board acted illegally in manner and form, so as to degrive the Plaintiff, JOHN WILLIAMS, of his right to due process under the Fourth Amendment to the United States Constitution, as follows: a. the Superintendent of the Bridgeport Police Department, Joseph Walsh, although not a member of the Board of Polica Commissioners, and actually publicly an adverse witness to the Plaintiff, and acting prosocutor at the hearing on January 13, 1970, sat with the Board, deliberated with said Board before, during and after the hearing, and specifically at the special roard session on December 30, 1969, counselled the Chairman of the Board, William O'Connor.

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b. there was no sequestration of the witnesses at the hearing on January 13, 1970 or Docember 11, 1969, notwithstanding repeated requests by Plaintiff's council for said sequestration.

- c. the action of the Board of Police Commissioners at their loaring on December 30, 1969, in suspending the plaintiff, JOHN WILLIAMS, for violation of Rule 98, was illegal in that the movant, Commissioner Francis Fagan, was sitting illegally on said Board in that he is a full-time employee of the Cityof Dridgeport and his membership on the Board of Police Commissioners is a direct and constant conflict of interest with his employment; secondly, the motion by Commissioner Fagan to suspend the Plaintiff for violation of Rule 98 was seconded at the habring on December 30, 1969 by Commissioner Andrew Lindmark, who, at the time of that hearing, was illegally sitting on said Doard, in that he had moved his place of residence to Mawtown, Connecticut and was no longer a resident of the City of Eridgeport, and therefore, had no legal right to sit on its Board of Police Commissioners. Furthermore, said Commissioner Andrew Lindmark officially resigned his membership on the Board of Police Commissioners on January 1, 1970 for the reason that he was no longer a resident of Bridgeport and in fact had moved to Newtown.
- d. said Board of Police Commissioners further acted illegally at the hearing on January 13, 1970, in that it was illegally constituted in that Commissioner Francis Fagan continued to sit and participate at that Board's session, notwithstanding the objection of plaintiff's councel that he should disqualify himself because of the conflict of interst arising from his municipal employment.
- e. said Board's action on January 13, 1970 was further illegal in that there was no complainant; that the Board of Police

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APP. 69 -6commissioners assumed the conflicting roles at said hearing of complainant, prosecutor, finder of facts, judge, and jury; and the Duporintendent of Police, Joseph A. Walch, assumed the role of prosecutor, over the objection of counsel for the Plaintiff, that he had no official right to participate in the proceedings. f. said Rule 98 of the Rules and Regulations of the Department of Police, for which the Plaintiff was prosecuted, is unconstitutionally vague in that the cited language, "conduct prejudicial to the good order and police discipling of the Department, does not contain standards or give proper notice to potential violators of that conduct would be projudicial to the good order and police discipline of the Department. g. said Board deprived the plaimiff, JOHN WILLIAMS, of his rights under the United States Constitution and the Constitution of the State of Connecticut in taking disciplinary action against him solely, exclusively, and expressly because he took advantage of his Fifth Amendment right to remain silent and refuse to answer questions which he fer might tend to incriminate him at the prior Board hearing on December 11, 1969. h. the Board of Police Commissioners failed to allow the Plaintiff to be present and to be heard at the initial suspension hearing on December 30, 1969, notwithstanding that representations by adverse witnesses were made and newspaper reporters were present and wore hoard from by the Board at that time. i. said Board was not represented or advised legally at said hearing by the Corporation Counsel on January 13, 1970. 15. In view of the conflicting testimony presented at said hearing, and said decision of the Board of Police Commissioners is arbitrary and could not be reasonably reached on the law and evidence presented.

- 16. Said decision is not in accordance with the principal of judicial decision requiring that charges be proved by a fair prependerance of the evidence when said decision admits a conflict to testimony existed.
- 17. In reaching its decision, the constitutional due process rights of the Plaintiff, John WILLIAMS, under the Fourth and Fourteenth /mendments to the United States Constitution, were flagrantly violated.
- 18. In reaching its decision, the constitutional rights of the Plaintiff under the Fifth Amendment of the United States Constitution were flagrantly violated.

WHITREFORE, the Plaintiff arguals from the decision and order of said Board and prays this Court to vacate and sat asidemid decision and order, reverse said Epard's finding of guilty, and restore compansation lost during the suspended pariod.

Dated at New Enven, Connecticut, this 16th day of January, 1970.

Appearance is hereby entered on behalf of the plaintiff.

JOHN WILLIAMS

HIS ATTORNEYS

" " " TRAUB

No. 93982

JOHN WILLIAMS

COURT OF COMMON PLEAS

v.

COUNTY OF FAIRFIELD

BOARD OF POLICE COMMISSIONERS FOR THE CITY OF BRIDGEPORT

DECEMBER 6, 1973

MEMORANDUM OF DECISION ON MOTION TO DISMISS FOR LACK OF JURISDICTION

In this appeal from the action of the defendant Board of Police Commissioners brought to this court on the first Tuesday of February 1970, the plaintiff claimed the case to a jury and the matter was assigned on the jury trial list. At the time that the matter was reached for trial the plaintiff orally withdrew his claim for trial by jury. The defendant then raised the question of the power of the court to hear the case and requested the matter be dismissed for lack of jurisdiction.

Although a motion to dismiss in the trial court is an improper procedure (East Side Civic Association v. Planning & Zoning Commission, 161 Conn. 558, 560, ____A.2d____), yet once the question of lack of jurisdiction is raised it must be disposed of regardless of the form of the motion. See Carter v. Carter, 153 Conn. 603, 610, 219 A.2d 711.

Lack of jurisdiction may be noticed at any time, whether or not it is raised by the parties. Tellier v. Zarnowski, 157 Conn. 370, 373, 254 A.2d 568. It cannot be waived by the silence of the parties. Gannon v. Sanders, 157 Conn. 1, 6, 244 A.2d 397.

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Jurisdiction over the subject matter of a proceeding cannot be conferred by consent or waiver. Long v. Zoning Commission, 133 Conn. 248. The written general appearance of the defendant therefore would not confer jurisdiction upon the court in the event there was a lack of power upon the part of the court to hear this controversy.

Both parties agree that the basic issue before the court on the matter of jurisdiction is whether the Court of Common Pleas has "jurisdiction" to hear the plaintiff's appeal from the decision of the defendant under § 52-7 of the Connecticut General Statutes.

At a hearing before the Bridgeport Board of Police Commissioners on January 13, 1970, Officer John Williams was discharged from the Bridgeport Police Department by the board for an alloged violation of § 93 of the Rules and Regulations of the Department of Police, City of Bridgeport. The plaintiff filed the instant appeal in this court on January 16, 1970, pursuant to § 52-7 of the Connecticut General Statutes. Under the provisions of § 7-467 of the Connecticut General Statutes the City of Bridgeport entered into a collective bargaining agreement with police department employees. Sec. 7-474 (f) provides, in part, as follows:

"Where there is a conflict between any agreement reached by a municipal employer and an employee organization and approved in accordance with the provisions of sections 7-467 to 7-477, inclusive, on matters appropriate to collective bargaining . . . and any charter, special act, ordinance, rules or regulations adopted by the municipal employer or its agents . . . the terms of such agreement shall prevail; . . ."

Pursuant to the provisions of the collective bargaining agreement in existence at the time of the above incident, the plaintiff filed a grievance with the Board of Arbitrators raising the same issues as sought to be determined in this case.

From an unfavorable decision an appeal was taken to the Superior Court, all as provided in the above mentioned collective bargaining agreement. That action, entitled John Williams v. Board of Police Commissioners (File No.142270), was dismissed by the Superior Court (O'Sullivan, J.). An appeal to the Supreme Court was subsequently withdrawn.

It is the contention of the plaintiff that both appellate reviews are available to him - one a contract right and the other a statutory right available to him via § 52-7. With this contention the court disagrees. He quotes from the brief of the defendant in the Superior Court action that "the city feels that the contract language would not be a bar to the appeal now pending." Such an admission, however, would not confer jurisdiction upon this court. Long v. Zoning Coursission, supra.

This court need not now speculate whether the Superior Court action mentioned above could have or should have been brought to the Court of Common Pleas or transferred thereto under the provisions of 52-7 of the Connecticut General Statutes. Under \$ 52-7 it is provided that "the court of common pleas shall have exclusive jurisdiction of all appeals from the doings of any municipal board, officer or commission . . ."

This court (Grillo, J.) has held in Ryan v. Board of Selectmen, 27 Conn. Sup. 31, 36, that § 52-7 does not create a right of appeal but merely gives the Court of Common Pleas exclusive jurisdiction of all appeals from administrative boards. Bartlett v. Rockville, 150 Conn. 428, 431.

Where the plaintiff has pursued his appeal to judgment in the Superior Court in accord with the collective bargaining agreement ha does not now possess a right to appeal to this court solely by virtue of § 52-7 of the Connecticut General Statutes absent a charter prevision allowing such an appeal. Section 238

of the City Charter avails the plaintiff nothing because the contract provisions (upon which the plaintiff's appeal to the Superior Court was based) by its express terms controlled over the provisions of the charter. The plaintiff availed himself of that remedy and he cannot now be permitted the alternate and inconsistent route to the result sought.

For this reason the plaintiff's appeal must be and therefore is dismissed for lack of jurisdiction.

O'BRIEN

DECEMBER 13. 1973 Judgment entered in accordance with the --ning. Conford D. Katz, Clerk

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BRIDGEPORT UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JOHN E. WILLIAMS, Plaintiff

vs.

CIVIL ACTION NO. B-74-95

JOSEPH A. WALSH, ET AL, Defendants

RULING ON PENDING MOTIONS

This civil rights action brought under the aegis of 42 U.S.C. §§ 1983 and 1985 stems from plaintiff's January, 1970 discharge as a Bridgeport, Connecticut patrolman for asserted violation of a police department rule against "conduct prejudicial to the good order and police discipline of the department" in refusing to testify at an earlier disciplinary hearing involving charges that he had fired at a speeding motorist. Defendants are Bridgeport's police superintendent and present and former members of the city's board of police commissioners. Claiming denial of Fourteenth Amendment due process guarantees by reason -- inter alia -- of the departmental rule's vagueness, and contending that he was in any event impermissibly penalized for exercise of his Fifth Amendment right of silence, plaintiff seeks reinstatement with back pay, an order barring enforcement of the guestioned rule provision, and awards of compensatory and "exemplary" damages; the complaint alleges in part that the actions of those defendants who were board members when plaintiff was discharged were "willful and malicious" and that they and the defendant superintendent "conspired and agreed to deprive Plaintiff of his [constitutional] rights".

Federal suit was instituted on March 27, 1974, following (1) an unfavorable arbitration award upon collective bargaining agreement-based grievance proceedings, (2) unsuccessful challenge to that arbitration award in the state Superior Court, and (3) jurisdictional dismissal of plaintiff's separate, direct appeal from the municipal board's action to the Connecticut Court of Common Pleas, see Williams v. Board of Police Commissioners for the City of Bridgeport, 31 Conn. Supp. 125, 324 A.2d 771 (Htfd. Cty. Ct. Comm. Pleas 1973). The Fifth Amendment issue was apparently raised and resolved against plaintiff in the Superior Court, and the due process questions were certainly posed -- but not decided -- by the Court of Common Pleas appeal. On cross-motions for summary judgment now pending, if defendants overstate the matter in urging that to entertain any federal claim here presented would improperly allow plaintiff "two bites at the cherry", Lombard v. Board of Education of the City of New York, 502 F.2d 631, 637 (2 Cir. 1974), cert. denied, 420 U.S. 976 (1975), this Court agrees with defendants that maintenance of the instant litigation is indeed precluded in any event because barred by limitations.

Absent an expressly provided federal statute of limitations, this Court must of course "borrow the state statute of limitations applicable to the most similar state cause of action", Kaiser v. Cahn, 510 F.2d 282, 284 (2 Cir. 1974), see also Johnson v. Railway Express Agency, Inc., 421 U.S. 454,

462 (1975), a task here potentially complicated by Connecticut': seeming lack of a statute of limitations explicitly governing claims of liability based on a statute, perhaps the most promising candidate in a Civil Rights Act suit, see Kaiser v. Cahn, supra, at 284-285 (New York limitations law). Plaintiff would analogize this action to one for mandamus, said to be limited in Connecticut only by "the equitable principle of unreasonable delay", Sullivan v. Morgan, 155 Conn. 630, 635, 236 A.2d 906, 908 (1967), but the complaint goes far beyond the claim for equitable redress for wrongful discharge which might be expected in such a proceeding, asserting rights to damages for such injuries as "great pain and suffering of mind, and great embarrassment and humiliation", allegedly resulting from purposeful misconduct in the claimed deprivation of civil rights. If not as obvious as in the case of an outright physical assault, compare Bensavage v. Scully, Civil No. N-75-216 (D. Conn. Nov. 25, 1975), the more reasonable conclusion in such depicted circumstances of deliberate wrongdoing would seem that the suit's timeliness is to be measured by Connecticut's general *hree-year statute of limitations for actions "founded upon a tort", cf. Conn. Gen. Stat. § 52-577.

The present action was brought more than four years after plaintiff's 1970 discharge but within a few months following jurisdictional dismissal of the state Court of Common Pleas appeal mentioned above; as the latter had been initiated almost immediately after the discharge, plaintiff additionally urges that the federal litigation be held timely in any event by deeming the three-year period tolled during the state proceeding's pendency, or by resort to the Connecticut "saving"

statute, Conn. Gen. Stat. § 52-592, which provides in relevant part that

"If any action, commenced within the time limited by law, has failed one or more times to be tried on its merits because . . . erased from the docket for want of jurisdiction, . . . the plaintiff . . . may commence a new action for the same cause at any time within one year after the determination of the original action . . ."

As plaintiff recognizes, however, the statutory appeal taken to the Court of Common Pleas has not been regarded an "action" within the meaning of the saving statute, see Carbone v. Zoning Board of Appeals, 126 Conn. 602, 13 A.2d 462 (1940), cf. Bank Building & Equipment Corp. v. Architectural Examining Board, 153 Conn. 121, 214 A.2d 377 (1965), and the Connecticut courts have not indicated that a contrary construction would result if the situation confronted was not the usual one of successive attempted appeals but one of a frustrated appeal followed by a wholly distinct proceeding by ordinary suit. Indeed, to the extent that considerations of federal policy may influence application of state law or even permit a tolling without state law basis, the very difference between the Common Pleas proceeding and the federal civil rights litigation counsels against sanctioning extended delay in choosing to institute the latter. The Civil Rights Act suit's commencement need not have awaited state judicial proceedings, and as previously noted the instant action represents far more than a renewed effort in another forum to gain reinstatement, including now as well serious damage claims against various individuals here accused of intentional misconduct. At least in such circumstances, there appears no sound reason to postpone bringing the federal action and accordingly no persuasive

justification for suspending the running of the statute of limitations.

There being no genuine issue of fact material to the question of the suit's timeliness, and defendants being entitled to judgment as a matter of law on the ground of a limitations bar, cf. Rule 56(c), Fed. R. Civ. P., for the reasons set forth above plaintiff's motion for summary judgment is hereby denied and defendants' motion for summary judgment hereby granted.

Dated at New Haven, Connecticut, this 22nd day of April 1976.

United States Magistrate

SO ORDERED

United States District Judge

FOOTNOTE

1/ Defendants' earlier-filed motion to dismiss
challenging the complaint's invocation of 42 U.S.C. § 1985,
see, e.g., Slegeski v. Ilq, 395 F. Supp. 1253, 1255 (D. Conn.
1975), was marked off for failure to prosecute, and decision
on the motion is not essential to the suit's disposition. As
noted elsewhere, however,

"It is not readily apparent why the plaintiff bothers to allege a claim under § 1985(3) nor why the defendants bother to oppose it. Since all of the defendants are public officers, amenable to suit under § 1983, the addition of a § 1985(3) claim adds no new defendant to the case, nor does it provide redress for a denial of right not covered by § 1983."

Nugent v. Guida, Civil No. N-74-275 (D. Conn. March 25, 1975).